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Date of Deposit: April 4, 2011

Attorney Docket No.: 21465-508001US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number	:	10/767,899	Confirmation No.	6163
Applicants	:	Jan BERKA , <i>et al.</i>		
Filed	:	January 28, 2004		
Patent Number	:	7,842,457		
Issued	:	November 30, 2010		
Examiner	:	David C. THOMAS		
TC/A.U.	:	1637		
Customer No.	:	35437		
For	:	BEAD EMULSION NUCLEIC ACID AMPLIFICATION		

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**SECOND REQUEST FOR RECONSIDERATION OF PATENT TERM
INDICATED ON FACE OF PATENT UNDER 37 C.F.R. §1.705(d)**

This request is filed in response to the Decision on Request for Reconsideration of Patent Term Adjustment (the "Decision") mailed on March 9, 2011 in relation to the above-referenced patent.

On November 30, 2010, the above-identified application matured into U.S. Patent No. 7,842,457 with a revised patent term adjustment of 413 days. On January 28, 2011, patentees timely submitted an application for patent term adjustment (with the required fee), asserting that the correct number of days of Patent Term Adjustment should be 427 days. Patentee disputed the reduction of 14 days for Applicant delay in connection with the Information Disclosure Statement filed September 9, 2010 (the "IDS"), which included a certification statement, pursuant to 37 C.F.R. §1.704(d), and therefore should not have been considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under 37 C.F.R. §1.704.

A decision on the petition was mailed March 9, 2011, dismissing the request because the "14 days was deducted for the filing of the IDS on September 9, 2010, pursuant to 37 C.F.R. §1.704(c)(10) not 37 C.F.R. §1.704(c)(8) as the IDS was filed after the mailing of the Notice of Allowance on July 14, 2010."

U.S.S.N.: 10/767,899
U.S.P.N.: 7,842,457
Applicant: Jan Berka, *et al.*

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This reasoning is not consistent with the rule set forth in 37 C.F.R. §1.704(d), which specifies that "[a] paper containing only an information disclosure statement in compliance with §§1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section" if it is accompanied by the appropriate statement. It is undisputed on this record that the IDS submitted on September 9, 2010 contained the proper statement under 37 C.F.R. § 1.704(d). Accordingly, this IDS should not be considered a failure to engage under any of paragraphs (c)(6), (c)(8), (c)(9), or (c)(10).

Reconsideration of the decision to dismiss Applicants' petition is respectfully requested. No additional fee is believed to be required, however Applicants authorize charging any additional fees due, or credit any overpayment of same, to Deposit Account Number: **50-0311**, Customer Number: **35437**, Reference Number: **21465-508001US**.

Respectfully submitted,

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